

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>JAMES O. STRUTHERS, Individually,</b>	)	
<b>and as Administrator of the Estate of</b>	)	
<b>ALICIA STRUTHERS, deceased,</b>	)	
	)	
<b>Plaintiff.</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 2:06-CV-00127-MHT-SRW</b>
	)	
<b>MERCK &amp; CO., INC., a foreign</b>	)	
<b>Corporation; ANNE BRANDON, an</b>	)	
<b>Individual; LAMONDE RUSSELL, an</b>	)	
<b>Individual; and fictitious Defendants</b>	)	
<b>A, B, C &amp; D, being those persons, firms</b>	)	
<b>or Corporations whose fraud, scheme to</b>	)	
<b>defraud, and/or other wrongful conduct</b>	)	
<b>caused or contributed to the Plaintiff's</b>	)	
<b>injuries and damages, and whose true</b>	)	
<b>names and identities are presently</b>	)	
<b>unknown to Plaintiff, but will be</b>	)	
<b>substituted by amendment when</b>	)	
<b>ascertained,</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION FOR EXPEDITED RULING ON MOTION FOR REMAND**

Plaintiff, James O. Struthers, has before this Court a motion for remand, which he is supplementing this same date. Plaintiff Struthers respectfully requests this Court to rule on the pending remand motion expeditiously. In support of this request, Plaintiff Struthers states as follows:

1. On March 2, 2006, the Joint Panel on Multidistrict Litigation ("JPML") submitted this case as part of Schedule CTO-43 Tag-Along Actions to be included in a Conditional Transfer Order (CTO-43) for ultimate transfer to the Vioxx Multidistrict Litigation ("MDL"), pending in the United States District Court for the Eastern District

of Louisiana. (See Exhibit "A" attached hereto.) Pursuant to the JPML Schedule, transfer to the MDL is imminent, unless this Court rules upon the remand motion promptly.

2. It is well-established that the federal court in which a remand motion is pending is in a far better position to determine the merits of that remand motion and brief than the MDL court. As the Hon. William R. Wilson, federal district judge presiding over the hormone therapy MDL proceedings in Arkansas has stated: "Having been in the position of both an MDL court in this case and a transferor court in other case, I believe the issue of remand is better addressed by the transferor court."<sup>1</sup> (See Exhibit "B", n. 6, attached hereto.) As set forth in more detail in Plaintiff's Opposition to Merck's Motion to Stay Proceedings Pending Transfer Decision by the Judicial Panel on Multidistrict Litigation, the precedence of the United States Court of Appeals for the Eleventh Circuit and other federal jurisdictions mandates that remand issues be decided promptly, in that subject matter jurisdiction issues directly involve whether the federal courts have the authority to proceed over pending matters before it.<sup>2</sup> To comply with the precedential authority and to avoid transfer of this cause of action, which will undoubtedly be lost in the process with several hundred other cases and the resolution of remand greatly delayed, Plaintiff Struthers respectfully requests the Court to rule on the pending Motion to Remand as soon as possible. However, if the Court determines that a hearing on the Motion to Remand will be beneficial to deciding this issue, Plaintiff is prepared to participate in such a hearing.

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<sup>1</sup> *Accord Hobbs v. Wyeth, et al*, 3:04-CV-176 (E.D. Ark.) (Order of United States District Court Judge Thomas Eisele) (Doc. No. 12), referenced in Judge Wilson's Order (Exhibit "B").

<sup>2</sup> See the authority cited and explained in Plaintiff's Opposition to Merck's Motion to Stay Proceedings Pending Transfer Decision by the Judicial Panel on Multidistrict Litigation.

3. Because this Court lacks subject matter jurisdiction, as set forth in more detail in the Motion to Remand, as amended, this case is due to be remanded to the Circuit Court of Montgomery County, Alabama. Any delay in ruling on the Motion to Remand will certainly result in the unnecessary transfer of this case to the MDL. Therefore, plaintiff moves this Court for an expedited ruling on the pending Motion to Remand.

Respectfully submitted this 7<sup>th</sup> day of March, 2006.

/s/ J. Paul Sizemore  
**ANDY D. BIRCHFIELD, JR. (BIR006)**  
**J. PAUL SIZEMORE (SIZ004)**  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon all counsel of record as listed below by placing a copy of same in the United States Mail, first class, postage prepaid on this the 7<sup>th</sup> day of March, 2006.

Richard Garrett  
Mike Brock  
F. Chadwick Morriss  
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/s/ J. Paul Sizemore  
**OF COUNSEL**